



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

March 23, 2023

By ECF

The Honorable Diane Gujarati
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *James Price, et al. v. U.S. Prob. & Pretrial Servs., EDNY,*
No. 22-cv-7221 (Gujarati, J.) (Bulsara, M.J.) (E.D.N.Y.)

Dear Judge Gujarati:

This Office represents Defendant U.S. Probation Office for the Eastern District of New York ("Defendant" or, alternatively, "U.S. Probation Office") in the above-referenced action commenced by Plaintiffs *pro se* James Price and Sherry Price. Defendant's deadline to answer, move or otherwise respond is today, March 23, 2023. Defendant had intended today to propose a jointly-agreed briefing schedule pursuant to Your Honor's Individual Rule III.A.1, which applies "[i]n cases where one or more parties are proceeding *pro se*," and directs the parties in such action to "jointly file a proposed briefing schedule for any . . . motion pursuant to [Rule] 12." However, Defendant's attempt to secure agreement to a briefing schedule was not successful; instead, Plaintiffs appear to want to amend the Complaint or drop claims, and requested of this Office a teleconference with the Court. As set forth below, this Office has no objection to a conference with the Court should the Court so prefer, and respectfully submits that if Plaintiff intend to amend the Complaint, that they do so, so that Defendant's forthcoming motion address the operant pleading.

By way of background, Plaintiff James Price, who is currently incarcerated at Federal Correctional Institution, Miami ("FCI Miami") in the Southern District of Florida, alleges that he is married to Plaintiff Sherry Price, who reportedly resides in the Eastern District of New York ("EDNY"). *See* Compl. ¶¶ 3-4. Plaintiff James Price submitted a request to have the location of his supervised release transferred from the Southern District of Florida to the EDNY, which the U.S. Probation Office allegedly denied. *See id.* ¶ 8. On November 29, 2022, Plaintiffs filed the Complaint in this action pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (the "APA"), for judicial review of the U.S. Probation Office decision regarding Plaintiff James Price's supervised release, seeking, *inter alia*, injunctive relief specifically, to set aside such decision. *See id.*, at 7.

As noted above, Defendant's deadline to answer, move, or otherwise respond to the Complaint is March 23, 2023. *See, e.g.,* Mar. 10, 2023 Minute Entry. Upon review of the Complaint, Defendant determined that a motion to dismiss this action in its entirety pursuant to Rule 12(b) was warranted. *See* ECF No. 8, at 4-5 (discussing proposed defenses to the suit).

In keeping with Your Honor's Individual Rule III.A.1, the undersigned discussed a proposed briefing schedule with Plaintiff Sherry Price during a telephone call earlier this week, who advised that she intended to speak with Plaintiff James Price, and followed up in an email that memorialized that conversation and requested a response to the proposed briefing schedule by close of business on March 23, 2023. The proposed schedule had been May 1, 2023 for Defendant to serve its opening brief, June 5, 2023 for Plaintiffs to serve their respective oppositions, and June 26, 2023 for Defendant to serve a reply as to its motion and file the motion papers. The undersigned was unsuccessful in reaching Plaintiff James Price, but Plaintiff *pro se* Sherry Price responded by email asserting that she was speaking on behalf of both Plaintiffs. Her email did not address the proposed briefing schedule; instead, it stated that both Plaintiffs agree that the APA claims can be dismissed, but somewhat confusingly that the U.S. Probation Office's decision "violates [their] constitutional right to live as a family unimpeded." Plaintiffs also "requested a telephonic conference with the Court."

Defendant respectfully submits that the Rule 12(b) motion that it anticipated filing in response to the Complaint on the above-referenced proposed briefing schedule would be premature if Plaintiffs intend to modify their pleading. Plaintiffs have not filed a motion requesting a conference with the Court. However, Defendant does not oppose Plaintiffs' request for a telephonic conference regarding this matter, and respectfully submits that such a conference may be useful to clarify what, if anything, remains of this suit at this time and Plaintiffs' respective intentions as to the nature of the pleadings.

Defendant thanks the Court for its consideration of this matter.

Respectfully submitted,

BREON PEACE
United States Attorney
Attorney for Defendants

By: /s/ David A. Cooper
DAVID A. COOPER
Assistant U.S. Attorney
(718) 254-6228
david.cooper4@usdoj.gov

cc: **By Certified Mail**
James Price
15801 SW 137th Avenue
Miami, FL 33177

Sherry Price
243-10 138th Avenue, Apt. # 2F
Rosedale, NY 11422
Plaintiffs pro se